

Prob 12B

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

**PETITION TO MODIFY THE CONDITIONS OF SUPERVISION
WITH CONSENT OF THE OFFENDER**

(Probation Form 49, Waiver of Hearing, is on file)

Offender Name: Bernardo Zuniga-Garcia

Docket Number: 1:05CR00027-01

Offender Address: Poplar, California

Judicial Officer: Honorable Oliver W. Wanger
United States District Judge
Fresno, California

Original Sentence Date: December 12, 2002

Original Offense: Attempted Bringing in of Aliens
(Eighth District Court in Tijuana - Republic of Mexico)

Original Sentence: 6 years imprisonment and fined 4,215 pesos

Special Conditions: None

Type of Supervision: Supervised Release (TSR)

Supervision Reimposed: November 10, 2004

Assistant U.S. Attorney: Mark Cullers **Telephone:** (559) 498-7272

Defense Attorney: Marc Ament **Telephone:** (559) 487-5561

Other Court Action:

12/08/2003: Pursuant to 18 USC 4106A, Prisoner Exchange Treaty with Mexico, the defendant was transferred to FCI La Tuna, Anthony, Texas.

01/21/2004: Post Sentence Investigation conducted by the Western District of Texas.

RE: Bernardo Zuniga-Garcia
Docket Number: 1:05CR00027-01

02/20/2004: Released from the Bureau of Prisons after signing the "Standard Conditions of Supervision Pursuant to 18 USC 4106A." Supervision commenced.
(Court of Jurisdiction - District of Nebraska).

04/08/2004: Probation Form 12C, Petition for Warrant, filed in the District of Nebraska, charging: 1) Failure to Report to Probation Officer Upon Release From Imprisonment; 2) Failure to Notify the Probation Officer within 72 hours of Change in Residence.

08/20/2004: Arrested and detained on the above-noted warrant.

11/10/2004: Defendant appeared before the Honorable Richard G. Kopf, in the District of Nebraska. He admitted the violations contained in the petition. As a result, his Supervised Release was revoked, and he was committed to the Bureau of Prisons for "time served." Supervised Release was reinstated for a term of 21 months, and he was ordered to obey 16 standard conditions of supervision. Further, the mandatory drug testing requirement was imposed.

01/27/2005: Transfer of Jurisdiction accepted from the District of Nebraska to the Eastern District of California, in Fresno
(Docket No: 1:05CR0027-01).

RE: Bernardo Zuniga-Garcia
Docket Number: 1:05CR00027-01

PETITIONING THE COURT

To modify the conditions of supervision as follows:

The defendant shall submit to the search of his person, property, home and vehicle by a United States Probation Officer, or any other authorized person under the immediate and personal supervision of the probation officer, without a search warrant. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

As directed by the probation officer, the defendant shall participate in a correctional treatment program to obtain assistance for drug and/or alcohol abuse.

As directed by the probation officer, the defendant shall participate in a program of testing (i.e., urine, breath, sweat patch, etc.,) to determine if he has reverted to the use of drugs or alcohol.

Justification: As reflected above, the defendant was originally sentenced in the Republic of Mexico for Attempted Bringing in of Aliens. He was sentenced to 6 years imprisonment and fined 4,215 pesos, in the Eighth District Court in Tijuana, Baja California, Mexico. On December 8, 2003, pursuant to the Prisoner Exchange Treaty with Mexico, he was transferred into the Bureau of Prisons. He was subsequently released on February 20, 2004, to the District of Nebraska, and supervision commenced. He had remained in continuous custody from May 4, 2002 through February 20, 2004.

Immediately, the defendant was in violation status, as he did not report to the United States Probation Office, in Omaha, Nebraska, and his whereabouts were unknown. On April 8, 2004, a warrant was issued, and the defendant was subsequently arrested on or about August 20, 2004, in the Eastern District of California. He was residing with his mother in Poplar, California.

RE: Bernardo Zuniga-Garcia
Docket Number: 1:05CR00027-01

On November 10, 2004, the defendant's supervision was revoked and he was committed to prison for time-served. Supervision was re-imposed for a period of 21 months, commencing on this date. Following this revocation, the defendant returned to the Eastern District of California, for supervision and jurisdiction soon followed.

During the past 12 months, it appeared the defendant was in compliance and making better choices for himself. He had maintained full-time employment, and has continued to reside with his mother in Poplar.

However, on December 8, 2005, the defendant was arrested by the California Highway Patrol, Porterville Division, for the following violations: 1) Transportation for Sale of Marijuana; 2) Possession of Marijuana for Sale; 3) Being Under the Influence of Marijuana; 4) Driving without a Valid License; 4) Possession of False Identification Cards; and, 5) Speeding. The defendant has a Court date on January 23, 2006, and the Tulare County District Attorneys Office will review this case, regarding a criminal complaint.

In brief (according to the CHP report), on December 8, 2005, at approximately 7:20 a.m., the defendant was observed to be speeding (74 mph in a 55 mph speed zone). Upon contact with the defendant, the CHP officer immediately detected a strong odor of burned marijuana emitting from the defendant's vehicle. The defendant admitted to the officer he was smoking a marijuana "joint" just prior to the traffic stop. Further, the defendant does not have a valid license. Following the arrest, the officer located 4-glass mason jars filled with marijuana; 1-plastic jar filled with marijuana; and 2-Zip Lock baggies filled with marijuana. In total, the defendant possessed approximately 290 grams (net weight) of marijuana. Additionally, the officers found a hand-held weighing scale and 3 forms of false identification belonging to the defendant.

On December 9, 2005, the defendant posted bail and reported to the probation office. The defendant clearly understands the seriousness of his conduct and expressed his willingness to comply with his conditions, and remain under supervision pending the outcome of these allegations.

RE: Bernardo Zuniga-Garcia
Docket Number: 1:05CR00027-01

In review of the defendant's lack of prior criminal convictions (before the arrest in Mexico), and his age (23 years old), it appears that closely supervising and monitoring his actions, with the above-noted modifications, will ensure community safety, and afford the defendant needed drug treatment. The defendant will be referred to the aftercare testing program for random urine collections, submitting at least 4 tests monthly.

Lastly, due to the seriousness of these allegations, this officer will report the violation conduct separately, to address his violation conduct after disposition in the local matter. The defendant has been advised that any further violation conduct, while pending these allegations, will most likely result in a violation warrant and detention.

Respectfully submitted,

/s/ Ben J. Blankenship

Ben J. Blankenship
Senior United States Probation Officer
Telephone: (559) 734-0317

DATED: December 15, 2005
Visalia, California

REVIEWED BY: /s/ Rick C. Louviere
Rick C. Louviere
Supervising United States Probation Officer

RE: Bernardo Zuniga-Garcia
Docket Number: 1:05CR00027-01

THE COURT ORDERS:

- (X) Modification approved as recommended.
- () Modification not approved at this time. Probation Officer to contact Court.
- () Other:

IT IS SO ORDERED.

Dated: March 15, 2006
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/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE